

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

6205-95

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JASON MARTIN,

Index No. 10-CV-05181
(ENV) (RER)

v.

Plaintiff,

JET EQUIPMENT & TOOLS, INC., and "John Does, Inc.," entities presently Unknown, intended to be distributors, Suppliers, and repairers of tilting ARBOR SAW, Model JTAS-10-3, and WALTER MEIER MANUFACTURING CORP.,

**ANSWER TO CROSS-
CLAIMS OF THIRD-PARTY
DEFENDANT OUTDOOR
INSTALLATIONS, LLC
D/B/A SPRING
SCAFFOLDING**

Defendant/Third-
Party Plaintiff,

v.

OUTDOOR INSTALLATIONS, LLC D/B/A SPRING
SCAFFOLDING and METRIC SERVICES, INC.,

Third-Party
Defendants.

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Third-Party Defendant, METRIC SERVICES, INC., by Cullen and Dykman LLP, Trial Counsel for Gregory J. Allen, Esq., New York State Insurance Fund, counsel to third-party defendant METRIC SERVICES, INC. as and for its answer to the Cross-Claims of third-party defendant OUTDOOR INSTALLATIONS, LLC D/B/A SPRING SCAFFOLDING alleges, upon information and belief, as follows:

**AS AND FOR AN ANSWER TO FIRST
CROSS-CLAIM AGAINST METRIC SERVICES, INC.**

FIRST: Denies each and every allegation contained in the First Cross-Claim against METRIC SERVICES, INC.

**AS AND FOR AN ANSWER TO SECOND
CROSS-CLAIM AGAINST METRIC SERVICES, INC.**

SECOND: Denies each and every allegation contained in the Second Cross-Claim against METRIC SERVICES, INC.

FIRST AFFIRMATIVE DEFENSE

THIRD: Whatever injuries and/or damages the Plaintiff may have sustained at the time and place mentioned in the Complaint and/or as a result of the occurrence alleged in the Complaint, all of which is denied by this Answering Third-Party Defendant, were caused in whole or in part by the culpable conduct of the Plaintiff. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the culpable conduct, attributable to Plaintiff, bears to the culpable conduct which caused said injuries.

SECOND AFFIRMATIVE DEFENSE

FOURTH: All risks and danger of loss or damages connected with the situation alleged in the Complaint were at the time and place mentioned obvious and apparent and were known by the Plaintiff and voluntarily assumed by Plaintiff.

THIRD AFFIRMATIVE DEFENSE

FIFTH: The injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom Answering Third-Party Defendant neither had nor exercised control.

FOURTH AFFIRMATIVE DEFENSE

SIXTH: The liability of this Answering Third-Party Defendant is limited by the provisions of Article 16 of the New York Civil Practice Law and Rules.

FIFTH AFFIRMATIVE DEFENSE

SEVENTH: Any verdict, judgment or decision that might be obtained by Plaintiff against this Answering Third-Party Defendant shall be reduced by the amount of any collateral source payments received by Plaintiff pursuant to CPLR §4545(c) as determined by the Court.

SIXTH AFFIRMATIVE DEFENSE

EIGHTH: Upon information and belief, that the product which forms the subject of this lawsuit was misused, mishandled, abused and otherwise improperly operated, used and maintained by the Plaintiff and by others over whom the Answering Third-Party Defendant neither had nor exercised control so as to proximately cause or contribute to the events, happenings and damages referred to in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

NINTH: The Second Amended Third-Party Complaint fails to state a cause of action.

EIGHTH AFFIRMATIVE DEFENSE

TENTH: The negligence of those responsible for the accident or the occurrence alleged in the Complaint constituted

a separate, independent, superseding, intervening culpable act or acts which constitute the sole proximate cause of the accident or occurrence alleged.

NINTH AFFIRMATIVE DEFENSE

ELEVENTH: The cause of action is barred by virtue of § 11 of the New York State Workers' Compensation Laws in that plaintiff did not sustain a grave injury as therein defined.

TENTH AFFIRMATIVE DEFENSE

TWELFTH: There was no contract between METRIC SERVICES, INC. and Defendant/Third-Party Plaintiff on the date of loss.

ELEVENTH AFFIRMATIVE DEFENSE

THIRTEENTH: This action is barred by the applicable Workers' Compensation laws.

TWELFTH AFFIRMATIVE DEFENSE

FOURTEENTH: Upon information and belief, plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

FIFTEENTH: Upon information and belief, any damages sustained by plaintiff were proximately caused by plaintiff's unauthorized alteration and/or misuse of the product in issue.

FOURTEENTH AFFIRMATIVE DEFENSE

SIXTEENTH: The cross-claims by OUTDOOR INSTALLATIONS, LLC D/B/A SPRING SCAFFOLDING are barred by the anti-subrogation rule.

WHEREFORE, Third-Party Defendant, METRIC SERVICES, INC., respectfully prays that the Court enter a judgment dismissing Third Party Defendant's Cross-Claims with prejudice in their entirety, denying each and every demand and prayer for relief therein; awarding Third-Party Defendant METRIC SERVICES, INC., reasonable attorneys' fees and costs, and granting Third-Party Defendant METRIC SERVICES, INC. such other and further relief as the Court deems just and proper.

Dated: Brooklyn, New York
July 5, 2011

Yours, etc.

CULLEN AND DYKMAN LLP

By:

Frank J. Lourenso (FJL3629)
Trial Counsel to Gregory J.
Allen, Esq., New York State
Insurance Fund, counsel to
third-party defendant Metric
Services, Inc.
177 Montague Street
Brooklyn, New York 11201
(718) 855-9000
C&D File No. 6205-95 (FJL)

TO: Paul A. Scrudato, Jill Berry, Esq.
Schiff Hardin LLP
Attorneys for Defendant/Third-Party
Plaintiff, Walter Meier Manufacturing, Inc.
900 Third Avenue

New York, NY 10022
(212) 753-5000

LONDON FISCHER LLP
By: Michael J. Carro (# 5452)
Trial Counsel to Gregory J. Allen, Esq.
For The New York State Insurance Fund
Attorneys for Third-Party Defendant
OUTDOOR INSTALLATIONS, LLC D/B/A A
SPRING SCAFFOLDING
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New York, NY 10038
(212) 972-1000

George N. Statfeld, P.C.
Attorneys for Plaintiff, Jason Martin
3 West 35th Street
New York, New York 10001

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
ss:
COUNTY OF KINGS)

ROSA CARRASCO, being duly sworn deposes and says:

I am not a party to this action, am over the age of 18 years, and reside in Richmond County, New York.

On July 5TH, 2011, I served the within ANSWER TO CROSS-CLAIMS OF THIRD-PARTY DEFENDANT OUTDOOR INSTALLATIONS, LLC D/B/A SPRING SCAFFOLDING upon:

Paul A. Scrudato, Jill Berry, Schiff Hardin LLP, Attorneys for Defendant/Third-Party Plaintiff, Walter Meier Manufacturing, Inc.;

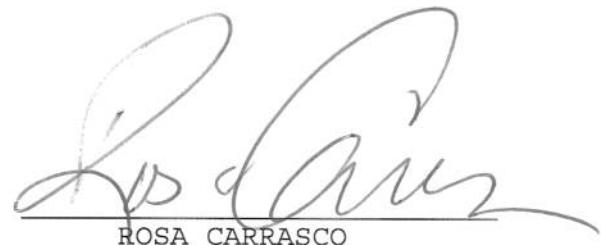
LONDON FISCHER LLP, By: Michael J. Carro (# 5452), Trial Counsel to Gregory J. Allen, Esq., For The New York State Insurance Fund Attorneys for Third-Party Defendant OUTDOOR INSTALLATIONS, LLC D/B/A SPRING SCAFFOLDING

George N. Statfeld, P.C., Attorneys for Plaintiff, Jason Martin by depositing a true copy thereof in a properly sealed postpaid wrapper, in a post office receptacle regularly maintained by the Government of the United States, addressed as follows:

Paul A. Scrudato, Jill Berry
Schiff Hardin LLP
900 Third Avenue
New York, NY 10022

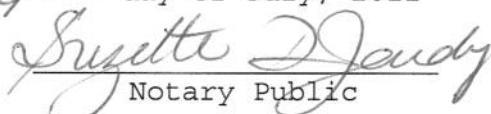
LONDON FISCHER LLP
By: Michael J. Carro
59 Maiden Lane, 41st Floor
New York, NY 10038

George N. Statfeld, P.C.
3 West 35th Street
New York, New York 10001



ROSA CARRASCO

Sworn to before me this
5th day of July, 2011



Suzette D. Jeudy
Notary Public

SUZETTE D. JEUDY
NOTARY PUBLIC, State of New York
No. 01JE5083733
Qualified in Kings County
Commission Expires Aug. 18, 2013